



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**MISCELLANEOUS CAUSE 108 OF 2016**  
**IN THE MATTER OF THE ESTATE OF A A A (SUBJECT)**  
**UNDER THE MENTAL HEALTH ACT CAP 248 LAWS OF KENYA**

**RULING**

The Applicant; H A A, filed notice of motion application brought under **Sections 26, 27, and 29 of The Mental Health Act, Cap 248** and sought to be appointed legal guardian to the subject and manager of the subject's estate.

The Applicant, biological sister of the subject deposed in her supporting affidavit that she is of Somali origin, residing in Kenya as she sought exemption from Commissioner of Refugee Affairs of Kenya to reside outside the confines of designated areas from 21<sup>st</sup> March, 2017. She attached copy of her passport **No [...]** and copy of the exemption letter marked **A & B** respectively. The letter lists the subject as her dependant.

The subject, A A A, worked with [particulars withheld] as the Regional Coordinator. On 6<sup>th</sup> October, 2008, the subject was severely injured in a terrorist attack. He underwent treatment in both Somalia and Kenya.

Dr. F .R. Owiti filed medical report dated 30<sup>th</sup> August 2016. He found the subject to be mute and diagnosed him with;

***post traumatic stress disorder and affective illness.....may require medical attention to manage him and train him to be functional.***

Dr. Marx Okonji filed medical report of 22<sup>nd</sup> May 2015 and diagnosed him with;

***post traumatic disorder and schizoaffective disorder.....he will need long term treatment and follow up***

Dr. Modi confirmed he admitted the subject at Avenue Hospital for treatment from 27<sup>th</sup> March, 2015 - 17<sup>th</sup> April, 2016.

Dr. M. Makanyengo through her report on examination of the subject and medical report filed on 10<sup>th</sup> April 2013 stated that the subject was suffering from;

***permanent personality changes; long term untreated severe mental disorder, extreme fatigue,***

*difficulty in concentration and memory problems and hallucinations and concluded that the subject was suffering from chronic psychiatric disorder.*

## **DETERMINATION**

The **Mental Health Act** is in place to ensure that individuals who suffer from mental illness are well cared for and their estates are properly handled. The **Mental Health Act**, at **Section 26** provides that:

*(1) The court may make orders—*

*(a) for the management of the estate of any person suffering from mental disorder; and*

*(b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.*

*(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.*

*(3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder. (Emphasis added)*

From the evidence provided to this court the Applicant's request for appointment as legal guardian is to be able to provide adequate care to the subject and ensure his well being. The applicant is the only blood relative residing in Kenya with the subject. They are living in Kenya on special circumstances, on provisional asylum status as depicted from the official documents attached. The applicant was granted by the Somali Regional Court responsibility over the subject as evidenced by the certified order of the Court attached to the application.

On the other hand, the Applicant has demonstrated through medical evidence from various doctors who attended to the subject that he is not in proper mental position to take care of his affairs and his welfare.

The Applicant sought from this Court the relevant orders to be appointed manager of the subject's estate so as to pursue and access funds on the subject's behalf from his former employer [particulars withheld] to cater for his upkeep and well being.

It is in the subject's best interest that the Applicant is appointed as his legal guardian and manager of his estate to settle the medical expenses and to ensure that funds are available for his upkeep and further medical attention in the future.

## **DISPOSITION**

In the circumstances the Court is satisfied of the subject's condition and circumstances and holds as follows:

**(a) A A A is hereby declared as suffering from a mental disorder under Section 26 of the Mental Health Act (Cap 248).**

**(b) H A A is hereby appointed under section 27 of the Mental Health Act as the Manager of the estate of A A A.**

**(c) H A A sister to the subject is hereby appointed legal guardian of A A A.**

**DELIVERED SIGNED & DATED AT NAIROBI THIS 10TH DAY OF NOVEMBER 2016**

**M. W. MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

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